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LORD ASHBURTON AND THE TREATY OF WASHINGTON

A CLEAR, straightforward narrative of the steps of the treaty of Washington, it is exceedingly difficult to give. Too many disturbing questions were to be disposed of. Certain stipulated points were to be settled, others not stipulated demanded equal consideration, and each point in turn called for a careful examination into earlier events. Thus the study jumps from the negotiation in progress to causes and events of many years earlier, or to an investigation of existing conditions or contemporary events which require a detailed rehearsing. Further, first instructions were followed by others, letters and protests between the Foreign Secretary and his agent crossed each other in transit, while unexpected hindrances developed to hamper the American representative. Nevertheless, it seems worth while to bring forward the new light upon the Ashburton negotiation, with such brevity as shall eliminate the non-essentials and give only proportionate space to the matters engrossing the attention of the agents.

The chief business of the treaty was the determining, to the satisfaction of both countries, a boundary line which for sixty years had been undecided, and for at least twenty years in active dispute. When Lord Ashburton was selected by the British government for this duty, his appointment was hailed both in England and in the United States as especially felicitous. There were indeed those in England who doubted the virility and energy of a man of his advanced years, while in America a truculent democratic press discovered grounds for suspicion in Ashburton's reputation as a financier. In spite, however, of these somewhat feeble criticisms, his selection was considered proof of a genuine desire on the part of England to negotiate upon a sincere and friendly basis. This belief gained still wider credence when Webster, the American secretary of state, stated that Ashburton had come to Washington without instructions and with full powers. It is quite possible that Ashburton, upon his arrival, believed himself to be without instructions, and may have so stated to Webster at Washington in April of 1842. He brought with him from England merely a general outline of the main purposes of the negotiation, drawn up by Aberdeen; to this was appended a "last resort" clause on the northeastern boundary question, deemed so

acceptable to the United States as to make the success of the negotiation seem assured. But some weeks later new and positive instructions, including certain restrictions, were sent from the British Foreign Office—threefold evidence of a more minute consideration, of more exact knowledge, and also of a greater appreciation of the demands of the colonies in America. These later official instructions show clearly Great Britain's desires in the negotiation, and are of especial interest when compared with the ultimate terms of the treaty of Washington of 1842. Very few of the despatches between Aberdeen and Ashburton have as yet appeared in print, and the more important of them are summarized here. They should reveal Ashburton's exact status as a negotiator extraordinary, England's hopes from the treaty, the actual results, and the explanation of the seemingly extraneous matters embedded in the treaty, or appended to it in the form of notes.¹

The northeastern frontier question had made practically no headway since the award of the King of the Netherlands, in 1831, declaring that the terms of the treaty of 1783 were impossible under actual physiographic conditions, and recommending an equitable division of the territory in dispute. This award had been accepted by Great Britain and rejected by the United States. Later, Great Britain withdrew her assent and the boundary question was no more nearly settled than before, but owing to England's consideration and rejection of the Dutch king's terms, became an even more delicate matter. With Palmerston in control of foreign affairs, courteous argument had given place to sharp rejoinder, and Aberdeen certainly felt when he took office in 1841 that the matter constituted a genuine danger in British foreign policy. Another sore point with Americans was the *Caroline* incident during the Canadian rebellion. An American vessel, the *Caroline*, in December, 1837, had been carrying supplies and volunteers from the American side to the rebel camp at Navy Island, on the Canadian side of the Niagara River, just above the falls. On the night of December 29, a body of Canadians seized her while at anchor on the American side, towed her into midstream, and set her on fire and adrift. This was regarded

¹ The official printed sources on the negotiation of the treaty of Washington, with text of the treaty and of notes appended to it, are to be found in *House Ex. Doc. No. 2*, 27 Cong., 3 sess., and in *British Sessional Papers*, 1843, *Commons*, vol. LXI. In addition to these, Ashburton's instructions on the Oregon boundary are in *House Ex. Doc. 1*, pt. 1 (vol. I., pt. 6), p. 218, 42 Cong., 3 sess. (*Berlin Arbitration*, 1872-1873.) Narratives of the negotiation and its results appear in all the larger American histories, while an excellent summary with citation of important printed documents is in Moore's *Digest of International Law*, vol. V. The additional manuscript material used in this article is in the British Public Record Office, under the classification, Foreign Office, America.

by the United States as an invasion of territory and an explanation was demanded, but none was immediately forthcoming from the British government. In the capture of the *Caroline* at least one American had been killed, and when, in November, 1840, a Canadian named McLeod came into New York state and boasted of sharing in the *Caroline* affair, he was arrested and tried for murder. McLeod, it was ultimately proved, had lied and he was accordingly released. The trial, however, had again focused public attention upon the *Caroline* affair, had fanned into flame the suppressed indignation, and this only a few months before Ashburton's arrival. There had been intense public excitement and a real danger of war. The *Caroline* incident could neither be forgotten nor ignored, and though more than four years had passed, the government of the United States still looked for an explanation or an apology. In addition to this grievance was the always vexing assertion by England of the right to search (or, as the English called it, the "right to visit") American vessels. The British claim of a right to "visit", though in practice now wholly confined to suspected slave-traders, aroused indignation in all quarters.

With these points in mind, Aberdeen on February 8, 1842, drew up the instructions which Ashburton carried with him to America, and which for some time he regarded as his only official guide in the negotiation.² Clearly, from the language and content of this document, he was entitled to believe that he had practically a free hand. Aberdeen had merely indicated in general terms the purposes of the mission, specifying them as of importance in the order named, north-eastern boundary, Oregon boundary, northwestern boundary, *Caroline* incident, and "right of search". He desired, if possible, to secure a treaty covering all of these points, but both from the instructions and from the accompanying documents it is evident that emphasis was placed upon the northeastern boundary controversy, and it was rather hoped than expected that a settlement would be made of some of the other questions. In regard to the Maine boundary, three solutions were permitted to Ashburton: (a) the whole British claim, (b) a conventional line which would give Great Britain both the upper and lower Madawaska settlements, and preserve to her the whole navigable portion of the river St. John, (c) the line of boundary "contained in the Award of the King of the Netherlands. . . . This line, although highly unfavourable and disadvantageous to our interests, we should not be disposed to reject, with certain modifications as the basis of settlement; but beyond

² F. O., America, 378, no. 2. Merely a brief extract from these instructions, on the right of search, is in the *Br. Sess. Paps.*, 1843, *Commons*, vol. LXI.

this, Her Majesty's Government would not be prepared under any circumstances to concede." The documents do not indicate just what "modifications" of the Netherlands award were desired, nor do they refer to that part of the award which, by departing from the strict terms of the treaty of 1783, permitted the United States to retain possession of Rouse's Point, at the head of Lake Champlain. There was, in reality, no British expectation that the "whole claim" could be secured, and Ashburton was directed to use all his energy to secure the line indicated in the second solution. Unquestionably, however, it was within his power to sign a treaty on the line of the Netherlands award, if forced to do so.

Other topics included in this broad instruction received comparatively little attention at the Foreign Office. The affair of the *Caroline* was included, not because any definite settlement was proposed, but in order to *explain* the incident, and in an indirect way to apologize for it, on the ground of the necessity of self-defense. Aberdeen's purpose in this regard was to eliminate a possible cause of friction dangerous to an equitable conclusion of the northeastern boundary. He did indeed apologize for the delay in expressing to the United States regret for the necessity of the act, and he added, "The violation of the independent jurisdiction of the United States . . . Her Majesty's Gov't regard in a very serious point of view. So far are they from thinking that an event of this kind can be lightly risked, they would rather deprecate its recurrence by every means in their power." Turning to the vexed question of the right of search or visit, Aberdeen apparently felt that there was little hope of a satisfactory solution. The result of much previous diplomatic correspondence had only served to make clear that neither nation would yield her point. Aberdeen denied that Great Britain claimed any "right to search" American vessels, but insisted that the "right to visit" was quite a different matter, and that while English naval officers were instructed to use it with delicacy "the right itself, being manifestly founded on justice and common sense, they [Her Majesty's government] are determined to maintain". In effect, the instructions on this point were mainly a warning to Ashburton not to consider any suggestions of concession by Great Britain. On the other hand, there was apparently no expectation that the United States would give way.³

³ This is in clear contradiction of the statement made by Aberdeen to Everett, when, in explaining the purposes of the Ashburton mission, he stated that he regarded a solution of the right of search difficulty as "the most important of all". Everett to Webster, December 31, 1841. *Br. Sess. Paps.*, 1843, *Commons*, LXI., Correspondence on the Treaty of Washington, p. 15. Either this was a blind, or Aberdeen changed his mind before Ashburton's departure, for certainly at no time during the negotiation did he appear to believe any agreement probable.

Thus Ashburton left England with a comparatively free hand in the essentials of the negotiation. After his departure, it is evident that more serious consideration was given to the boundary question, and particularly to the necessity of preserving the military road connecting Quebec and Halifax. This was no new matter, for direct military communication between Canada and New Brunswick had for many years been insisted upon by military experts and colonial governors. Indeed, in 1828, while preparing the English case to be submitted to the King of the Netherlands, a genuine dispute arose between the experts of the Colonial and Foreign offices on this very point.⁴ The Foreign Office believed the demands of the Colonial Office extreme. It is quite possible that, in 1842, Aberdeen was in similar fashion forced by the Colonial Office to make claims with which he personally had little sympathy. Whatever the cause, whether from colonial or military officials, the new instructions to Ashburton, sent on March 31, 1842, bore directly on the military road. Aberdeen wrote:

MY LORD,

The instructions which Your Lordship has already received will be sufficient for the general direction of your conduct in the negotiation with which you are charged, for the settlement of our various subjects of difference with the Government of the United States. But you have also been apprised that the views of Her Majesty's Govt. respecting the establishment of the North-East Boundary had not been fully and definitely explained; nor those terms especially, clearly laid down, without obtaining which, a rupture of the negotiations would be regarded as preferable to further concession. In order to leave Your Ld no longer in uncertainty upon this subject, I have now the honour to communicate to you the final Instructions of Her Majesty's Govt.

As it is the firm determination of Her Majesty to preserve the dominion of our North American Provinces, it follows that all necessary Precautions must be taken to ensure the success of this resolution. Admitting therefore, the principle of a conventional Line, to be agreed upon by a mutual concession of the extreme claims of both the Parties, there is a limit, beyond which a regard for the safety of these Provinces must forbid us to recede.

The geographical features of the Country appear to offer no natural frontier, or strong line of defence; and the most indispensable condition for the security of our North American Possessions is to be found in a direct and constant communication between Quebec and the Sea at the Port of Halifax, through the Provinces of New Brunswick and Nova

⁴ F. O., Am., 253, "Canning, Douglas, Addington, etc. on N. E. Boundary." This volume is largely devoted to a discussion of documents and arguments to be presented to the arbiter, and exhibits a marked disagreement between experts, both as to the claim to be presented and as to arguments in support of it. Colonial Office papers, unlike the Foreign Office papers, were not open to search after 1830, at the time when the author was working in the Record Office (1908). They have since been opened to 1837.

Scotia, during that period of the year when the St. Lawrence is rendered inaccessible. The line of communication at present runs from Frederickton through the valley of the St. John by the Great Falls, to the Madawaska River. From thence by Lake Temiscouta and Grand Portage to the St. Lawrence.

It is deemed essential that this Line should be preserved.

Her Majesty's Government trust that the information which has recently been obtained by a scientific examination of the disputed Territory, and the Light which has been thrown on the subject by the discovery and production of important documents connected with the negotiations for the peace of 1783, will have produced their effect in the United States. Indeed it is difficult to believe that with the assistance thus afforded, Your Lordship should not be enabled to bring home to the conviction of candid and impartial men a sense of the justice of the claim of Great Britain.

Notwithstanding the reasonableness of this persuasion, H. M. Govt are not ignorant of the pretensions of the United States, or of the manner in which they have been enforced; and having always urged the wisdom and expediency of agreeing to a Conventional Line, to be established upon a principle of mutual concession, they could scarcely now adhere, without any deviation, to the utmost extent of the British Claim put forward under the Treaty of 1783.

Upon this subject you have already received instructions.

It is possible, however, that the Govt of the United States may be determined to revert to the Award of the King of the Netherlands, as the Basis of a Settlement. But it must never be forgotten that this Award was rejected by the United States, and is therefore in no degree whatever binding upon Great Britain. The record of it remains in the Archives of the respective states, and may be referred to as a matter of fact, or in negotiation, but cannot possess any obligatory character. Should you be unable to prevent this determination on the part of the United States, you will at least insist upon taking as a basis the Award pronounced by the King, with the avowed purpose of obtaining that portion of the Territory which is indispensable to our interests, by a cession of such parts as may be made without danger.

The Line laid down by the Royal Arbitrer follows the course of the St. John, as far as the point of junction of that River with the St. Francis. After which, ascending the St. Francis, by a North and Westerly direction, it advances near to the St. Lawrence, and falls into the Line of Boundary claimed by the United States. It thus very materially interferes with the freedom and security of our communications.

The other points submitted to Arbitration, were decided by the King of the Netherlands in favour of the British Govt. The District at the head of Connecticut River was adjudged to Great Britain; as well as a Line of settled Country continued from the head of the Connecticut River along the 45th Parallel of Latitude, until it reaches the St. Lawrence. This Line includes Rous's Point, a very important position on Lake Champlain, which the Govt of the U. States have always shewn a great desire to possess. And although this Point was adjudged by the King of the Netherlands to the U. States, it was so as a matter of compromise, and contrary to the principle of his decision, which recognized the 45th parallel of Latitude as correctly described in the claim of Great Britain.

Now, these latter advantages might safely be ceded, on condition of our obtaining possession of the whole of the Territory between the Upper part of the St. John and the St. Lawrence. That is to say, by making the River St. John from its junction with the St. Francis up to its source in the small Lake of St. John, or the Oostastagomessis of the Indians, the Boundary Line with the United States.

The District thus ceded to us, and now claimed by the United States, would comprise about two millions of Acres, wholly unsettled, and for the most part consisting of Land partaking of the character of a Pine Swamp. But if the Territorial advantages you are enabled to offer on other points of the Line, should not be considered as a just Equivalent for this cession, Her Majesty's Govt would be disposed to indemnify the State of Maine by a pecuniary compensation, to make good the amount of any such deficiency.

From this modification of the Award of the King of the Netherlands, which is considered essential to the security of Canada, H M. Govt would not withhold their assent; But Your Lordship will not consider yourself authorized to entertain the proposition of a settlement upon less favourable terms.⁵

Ashburton reached Washington on April 4, and was soon engaged with Webster in an informal discussion of various matters which it was hoped to incorporate in a treaty. Upon the Maine boundary question it was not at first possible to make much advance, since Maine and Massachusetts were slow in giving Webster authority to act for them. This delay Ashburton regarded as fortunate since it gave opportunity for an amicable and unhurried consideration of other matters. His first reports to Aberdeen were purely perfunctory, and gave no detail. Immediately, however, after receiving the instruction of March 31, Ashburton sent two despatches, both dated April 25.⁶ The first of these, ignoring the new ultimatum from Aberdeen, conveyed a full report of the negotiation to date, was hopeful in tone, and optimistic as to the ultimate conclusion of the mission. The second, acknowledging Aberdeen's advices, was devoted to an analysis of the new instructions, and was distinctly pessimistic. In the first Ashburton asserted that the outlook was favorable to settling *all* of the outstanding points of dispute. The Oregon matter, he thought, could easily be settled, and was really of little importance. "I much doubt whether the Americans will for many years to come make any considerable lodgment on the Pacific." It is not apparent, however, that the Oregon question was at any time under serious consideration in this negotiation.

Another question, that of the *Creole*, though not mentioned in Aberdeen's instructions, was now under discussion by the two diplo-

⁵ F. O., Am., 378, no. 6.

⁶ *Ibid.*, 379, nos. 2 and 3. A brief extract from no. 2, stating the purpose of the joint cruising squadron, is all that was printed in the *Br. Sess. Paps.*, 1843. *Commons*, vol. LXI., Correspondence between Great Britain and the United States, p. 4.

mats, since there was much public excitement about it, and Ashburton felt that it demanded consideration. An American ship, the *Creole*, had sailed from Virginia for Louisiana with a cargo of slaves, but at sea the slaves rose, imprisoned the officers and crew, and took the vessel into the port of Nassau. Here the slaves were given their liberty by British officials. In several previous cases American vessels transporting "domestic" slaves had been driven by stress of weather into British colonial ports, and the slaves freed by colonial officials. In this case "mutiny" was substituted for stress of weather and the slaves compassed their own freedom, without interposition of Providence, depending on the assistance of British colonial officers. The alleged mutiny, a new element in the situation, forced upon Ashburton and Webster a thorough discussion of the relation of British officials and American slave-transfer ships. Subsequently Ashburton expressed to Aberdeen the hope that the British government would concede that in the future ships carrying American slaves should be free from interference in case no slaves had actually set foot on British soil. Security for the future, he wrote, was of more importance to Southern slave owners than compensation for past injuries.

The third matter in these preliminary discussions reported by Ashburton, and in his view by far the most important, was England's insistence upon the right to visit. Yet delicate as the question was, Ashburton was pleasantly confident of greater progress than the home government anticipated, and he counted upon agreeably surprising Aberdeen. Webster had proposed a joint cruising squadron to sail the African coast for the purpose of suppressing the African slave-trade. Though without instructions upon the point, Ashburton was so sure of approval that he had already gone far in the preliminaries of such an arrangement, and wrote that if the plan could be successfully carried out, "I shall consider it to be the very best fruit of this mission". As to the exact relation of this plan to the question of right of search, Ashburton was not explicit.

In the second despatch of this date, however, the prospects seemed far less promising, for Ashburton here turned to the supplementary instructions on the Maine boundary, and professed to find in these a possible, even a probable cause for the failure of the entire negotiation. In the supplementary instructions Aberdeen insisted on the entire territory west of the upper St. John, from the source of that river to the point of its junction with the St. Francis. This was a demand of territory far in excess of the Netherlands award and would have made possible a continuous military road, proceed-

ing from Quebec in a southeasterly direction until it reached the headwaters of the St. John, then following the windings of that river to its entrance into the province of New Brunswick.⁷ The territory thus demanded by Aberdeen was an elongated rectangle, roughly outlined on its longer sides by the upper St. John on the southeast, and by the watershed of the St. Lawrence on the northwest. Ashburton at once recognized in this instruction a new and a serious departure from the plan previously agreed to by Aberdeen. He wrote that it now became necessary "to discuss with Your Lordship the very considerable reduction of the powers previously given to me . . . and to press earnestly upon your consideration whether those limitations . . . are not, if I do not misinterpret them, of a description calculated to expose to failure the whole attempt at negotiation".⁸ He emphasized also the mistake of insisting upon any great modification of the Netherlands award, since for a long time the United States had been most unwilling to accept even the line of that award, and since, also, Great Britain had, at one time at least, acceded to it.

What one should like to have is one thing; but to a compromise there must be two Parties, and our other Party in this case is a jealous, arrogant, democratic Body. You may, it is true, from motives of expediency, refuse to treat; but this Mission in the face of the Publick, implies a readiness to settle differences on terms which reasonable Men shall say are fair and honorable. If I leave this Country throwing all our relations with it into confusion, because I had insisted on a larger portion of this disputed Territory than we had at one period of our Negotiations been willing to accept, and which our Adversary had always refused to give, the consequence could not fail to be that the whole Union would indignantly take part with Maine, and we should pass for a Power having trifled with and insulted the Country.⁹

It is to be remembered that Ashburton, as all his correspondence shows, regarded the Maine boundary as but one of many important questions in negotiation. He now asserted that if the line of the upper St. John were insisted upon, it would wreck the treaty; that the people of the United States were a unit in believing the pretensions of Maine to be just, and in believing also that Great Britain had "set up" a claim, merely to secure a military road. He combated with vigor the influence and arguments of "military experts", whom he believed responsible for Aberdeen's demands. The upper St. John, he argued, was not absolutely essential to a military road.

⁷ The road earlier desired by military experts had crossed the St. John near its source, and then struck directly east across the land south of the St. John toward the nearest point of New Brunswick. Aberdeen, however, evidently considered it useless to attempt to secure any territory south of the St. John.

⁸ Ashburton to Aberdeen, April 25, 1842. F. O., Am., 379, no. 3.

⁹ *Ibid.*

He urged rather that the real danger point for the line of communications was in that section where the road ran close to the lower St. John, from the upper Madawaska settlement to the New Brunswick frontier, and that land secured on the south of the river here would widen the gap between the road and United States territory, and so constitute a much greater security. A concession from the United States at this point, he believed much more feasible than that outlined by Aberdeen, and he urged that he be given permission to make the substitution. This would secure to Great Britain the territory south of the St. John, lying between the Aroostook and Fish rivers, and would be additionally desirable since many British citizens were already settled in the district. But even though Ashburton proposed this counter-plan, he still emphasized the fact that, in the last resort, he must have authority to sign a treaty accepting the Netherlands award, precisely as outlined, or that Great Britain must be prepared to see a renewal of border troubles, with every probability of war as a result.

Fortunately for Ashburton, at the moment when he was thus checked by his new boundary instructions, Webster was experiencing difficulty with the Maine commissioners, and was forced to ask for delay. Pending a resumption of the boundary topic, the *Creole* matter came up for further discussion. Webster, in response to indignant outcries from Southern slave owners, had instructed Everett, the American minister at London, to make a protest, and to ask for security against a repetition of the incident. Everett had not presented the matter previous to Ashburton's departure, but the latter knew from Webster of Everett's instructions, and awaited developments with keen interest. On April 28, Ashburton wrote to Aberdeen that Webster hoped to connect the case of the *Creole* with a general extradition treaty, in which an article should be inserted covering similar cases.¹⁰ Webster's draft article, transmitted by Ashburton, would have compelled British colonial officials not only to abstain from all interference with slave vessels driven by stress of weather into British ports, but went still further in cases of mutiny by slaves, requiring colonial officials to aid the officers and owners to recover possession of their ships. Upon this latter clause Ashburton made no comment, save to express the opinion that some agreement was necessary, if constant friction were to be avoided. Meanwhile Everett, acting upon instructions, had presented the American protest at London. He had received in reply a formal acknowledgment from the Foreign Office, in which the action of the colonial officials in the *Creole* case was commended. Aberdeen's at-

¹⁰ *Ibid.*, no. 5.

titude was distinctly disconcerting. A protest which could call forth neither courteous regrets nor the slightest hint of concession for the future spelled embarrassment at least for the negotiators. When the news reached Washington each felt that the matter constituted a serious menace to the success of their negotiation and it was agreed, as Ashburton reported to Aberdeen on May 12, that "for the present it [Aberdeen's reply to Everett] must not be published here, as it does not suit our present purpose to irritate the Southern people".¹¹

The *Creole* case being of secondary importance to Ashburton, he recurred to the project of a treaty covering the joint questions of right of search and the African slave-trade. The slave-trade treaty, he wrote, "is advancing favourably". He lauded the report made to Webster by two American naval officers, Bell and Paine, upon the feasibility of joint cruising.¹² This report, dated May 10, 1842, is well known, and was printed in the official documents both of the United States and Great Britain, but one portion of it, as given in the original,¹³ which was sent to Aberdeen, is of especial interest in connection with the right of search. Bell and Paine, after narrating the conditions prevailing on the African coast, stated:

We are of opinion that a squadron should be kept on the coast of Africa to co-operate with the British, or other nations interested in stopping the Slave-Trade; and that the most efficient mode would be, for vessels to cruize in couples, one of each nation; (with an understanding that either of the cruisers may examine a suspicious vessel so far as may be necessary to determine her *national* character; while any farther search would be only pursued by the vessel having a right from the law of nations, or from existing treaties).

The words included within the parentheses, in the quotation just given, have a line drawn through them in the original, and are omitted in the report as it finally appeared in print. Ashburton believed them to have been thus cut out by Webster, because they seemed to imply a concession of the "right to visit" for which the British had so long contended. He did not, however, comment upon this, but rather upon the reasonable spirit here manifested by American naval officers, and upon their genuine desire to suppress the slave-trade. Ashburton had been brought, indeed, to a keener realization than prevailed in England, of the sensitiveness of the American public in the matter of the right of search, and of the practical difficulties of American statesmen in so dealing with the question as not to endanger their own political future. In a second despatch of May 12, he informed Aberdeen that the

¹¹ F. O., Am., 379, no. 6.

¹² *Br. Sess. Paps.*, 1843, *Commons*, vol. LXI., Correspondence between Great Britain and the United States, pp. 5-9.

¹³ Ashburton to Aberdeen, no. 6, May 12, 1842. F. O., Am., 379.

American position was due primarily to a fear of the renewal of British impressment, as formerly practised.¹⁴ Webster, in order to popularize the treaty, he argued, needed some British declaration, if not in the treaty itself, at least in the form of a note, that there would be no attempt in the future to impress British seamen from American vessels. He suggested a draft clause of such a declaration, and urged in support of it that Great Britain would never again venture to take seamen from American vessels. The clause read:

that in the event of our being engaged in a war in which the United States shall be neutral, impressment from her Merchant Vessels navigating the *High Seas* will not be practised, provided that provision be made by Law or other competent regulation, that during such War no subject of the Crown be entered into the Merchant Service of America, that shall not have been resident at least five years in the United States.

Ashburton's argument to Aberdeen was that:

Impressment, as a system, is an anomaly hardly bearable by our own people. To the foreigner it is undeniable tyranny, which can only be imposed upon him by force, and submitted to by him so long as that force continues. Our last war, and the perils in which at some periods of that War we were involved, may perhaps have justified violence. America was comparatively weak, and was forced for some years to submit. . . . But the proportions of Power are altered. The population of America has more than doubled since the last War, and that War has given her a Navy which she had not before. A Navy very efficient in proportion to its extent.

Under these circumstances can Impressment ever be repeated? I apprehend nobody in England thinks it can.

In the matter of impressment, as in the case of the *Creole*, Ashburton was of course without instruction, and could enter into discussion with Webster only upon his own responsibility. Nevertheless, informal unofficial discussions continued, and Ashburton evinced no less confidence than he had shown previous to the hampering boundary instructions. Ashburton's protest in that connection had been sent on April 25. The reply of the Foreign Office was prompt. On May 26 Aberdeen wrote that the first desire, and the real need of Great Britain was for the line of the upper St. John, and that Ashburton must try to secure this, in preference to the plan of obtaining land farther down and to the south of the river.¹⁵ But if this first object were unattainable, then Ashburton's plan might be urged; and in the last resort, if the United States would yield neither of these portions of territory, then, only, and

¹⁴ *Ibid.*, no. 7.

¹⁵ *Ibid.*, 378, no. 8.

very reluctantly, Ashburton was given permission to "ascertain" if the Netherlands line, pure and simple, would be satisfactory to the United States. Ashburton had not asked directly for authority to conclude on the basis of the Netherlands line, but his arguments asserted that such a conclusion would be better than no treaty at all. Neither did Aberdeen give specific authority, but the form and manner of his reply to Ashburton indicated that Great Britain probably would not, in the last resort, refuse that line. Indeed, from the time when he received this instruction, the British negotiator felt free to conclude the Maine boundary question as his judgment dictated, provided only that the ultimate boundary line should not give Great Britain less than the Netherlands award. Late in June both Webster and President Tyler feared that Ashburton had been embarrassed by further instructions on the boundary question, and that these, in connection with the stubborn determination of the Maine commissioners, were wearing out his patience.¹⁶ The boundary question, however, caused him no uneasiness. On June 14, he wrote to Aberdeen that America was now ready to accept reasonable terms, adding: "I trust and hope that what we may do, may appear to deserve that character. That this should be so is of much more importance than any advantage to be gained in the details of a bargain."¹⁷ On June 29, after receiving Aberdeen's instruction of May 26, at a time when he was presumed to be discouraged, Ashburton wrote again that he now hoped to secure the line indicated by Aberdeen, namely, that of the upper St. John.¹⁸ In the formal statement of the British contention, presented to Webster on June 21, claim had been laid both to the upper St. John and to the Madawaska settlements south of the lower portion of that river, but it is evident from the correspondence with Aberdeen that Ashburton had no hope of securing the latter territory. The persistent refusal of Maine to consider this proposal, and the vexatious and threatening delays in the negotiation soon led the British agent to withdraw his claim to the lower Madawaska settlement.¹⁹

Such a concession was both reasonable and politic. Relying indeed on the implied permission given to him to sign a treaty based on the Netherlands award, he was at no time later seriously disturbed by the bargaining over boundaries. Indeed, the boundary question, in the light of his elastic instructions, was a far simpler matter to Ashburton than other points in dispute. When, therefore, after much forcing on the part of Webster, Maine was brought to con-

¹⁶ Reeves, *American Diplomacy under Tyler and Polk*, p. 47.

¹⁷ F. O., Am., 379, no. 9.

¹⁸ *Ibid.*, no. 10.

¹⁹ Ashburton to Aberdeen, July 13, 1842. *Ibid.*, 380, no. 13.

sent to a compromise line, Ashburton felt that the solution was wholly satisfactory. The line agreed upon practically divided into equal portions that parallelogram of territory originally regarded by Aberdeen as essential to British military security. It gave the entire line of the St. John to the United States, but it also gave considerably more to Great Britain than had been awarded her by the King of the Netherlands. The boundary followed the St. John up to the point of its junction with the St. Francis, thence ran along that river to Lake Pohenagamook, and at this point departed from any so-called natural boundaries, and struck in a direct line to the southwest source of the St. John. This arrangement, in no way foreshadowed in the correspondence between Aberdeen and Ashburton, made it possible, if desirable, for the military road to cross the "highlands" of the St. Lawrence at some point directly east of Quebec, and thence to run to the northeast, and on the *eastern* side of those highlands, as Aberdeen had apparently wished, rather than on the *western* side, as Ashburton had proposed and the Netherlands award would have required.

Aberdeen's instruction of May 26, on the boundary matter, reached Ashburton at the same time with brief replies, written on June 3, to the questions and suggestions addressed to the British government in regard to impressment, extradition, and the *Creole*.²⁰ It was in relation to these latter subjects that Ashburton was for the moment disquieted. In a short note Aberdeen refused to assent to the proposed abandonment of impressment on the ground that this would be "tantamount to an absolute and entire renunciation of the indefeasible right inherent in the British Crown to command the allegiance and Services of its Subjects, wherever found". In another note of the same date,²¹ he approved the terms of the proposed extradition article, and the list of crimes, except that of "mutiny and revolt on board ship", which was the wording of the clause intended by the negotiators at Washington to cover cases like the *Creole*. The joint-cruising project which Ashburton had reported with such enthusiasm, Aberdeen briefly approved without comment. Ashburton could only feel that the British ministry was either indifferent to the plan of "settling all points in dispute", or else was too exclusively concerned with the boundary to see clearly the bearing and importance of other matters. On June 29, in acknowledgment of the advices from the Foreign Office just referred

²⁰ Aberdeen to Ashburton. *Ibid.*, 378, no. 9. A brief extract, approving the joint-cruising clause, together with an extract from Ashburton's first report on this topic, April 25, was printed in *Br. Sess. Paps.*, 1843, *Commons*, vol. LXI., Correspondence between Great Britain and the United States, p. 4.

²¹ F. O., Am., 378, no. 10.

to, he despatched three communications to Aberdeen. The first of these, already noted, stated that generous boundary concessions by the United States were within view; the second expressed regret at Aberdeen's decision with regard to impressment, but made no further proposal;²² while in the third Ashburton recapitulated the reasons for taking up the questions of extradition and the *Creole*, stating that in America his mission was expected to dispose of *all* the questions of difference between the two nations. He, too, had hoped to meet these expectations and was greatly chagrined to learn the decision of the British cabinet in regard to them. In the case of the *Creole*, he assured Aberdeen that failure to give satisfaction for the future would be a serious disappointment to the American President and Congress, and threatened the successful conclusion of other matters under discussion.²³ The contradiction in language and tone between despatches written on the same date, in one of which Ashburton was extremely confident of boundary advantages, and in another doubtful as to securing any treaty at all, is difficult to explain. Possibly the three despatches, taken together, were intended to convey to Aberdeen an idea of the large advantages in boundary that might have been secured had Ashburton been given a free hand in other matters and certainly his communications of June 29 laid the ground of an excellent defense, on the line of hampering restrictions, in case the entire negotiation came to naught.

The treaty finally included, in addition to boundary matters, articles providing for joint cruising in suppression of the slave-trade, and for extradition. A note by Ashburton, together with one by Webster, covered the case of the *Caroline*, and apology "for the necessity of the act", was expressed on the lines indicated by Aberdeen in his first instructions. Webster's note on impressment presented in elaborate form the American contention against the British assertion of this right, and in reply Ashburton admitted "that some remedy should, if possible, be applied. At all events it must be fairly and honestly attempted."²⁴ This implied a pledge of later negotiation. On the *Creole*, Webster's note asked that Ashburton promise that instructions should be given to colonial officers to safeguard the rights of citizens of the United States. In reply, Ashburton expressed his regret that he had no instructions in the matter, and stated that he might even have ventured

²² F. O., Am., 379, no. 11.

²³ *Ibid.*, no. 12.

²⁴ Ashburton to Webster, August 9, 1842. *Br. Sess. Paps.*, 1843, *Commons*, vol. LXI., Correspondence between Ashburton and Webster, p. 64.

to act without such instructions, "if I had not arrived at the conclusion, after very anxious consideration, that . . . this question had better be treated in London, where it will have a much increased chance of settlement on terms likely to satisfy the interests of the United States".²⁵ On August 9, Ashburton transmitted to Aberdeen this correspondence with Webster, and explained why he had ventured upon it.²⁶ Some official statement upon the *Creole*, he asserted, had become essential to the safety of the treaty. It had proved the most difficult of all the topics with which he had attempted to deal. Webster's note and argument were "mainly calculated to cover his popularity in the South", while his own note "was intended to evade any engagement, while I maintained our general principles with regard to Slavery". "To say something conciliating was indispensable to the safety of our other objects." Ashburton expressed the hope that his vague pledge as to the conduct of colonial officials would not be disavowed, and again insisted that British lawyers must find some way out of this difficulty, or constant friction with the United States would surely result. Two treaties were ultimately agreed upon and signed by the negotiators, the one dealing with the boundary, the other with the topics of joint cruising and extradition. These were transmitted to England for ratification, but the day after they were despatched, it was considered wiser, in view of possible rejection by the Senate, that they be incorporated in one treaty, and this was done.²⁷

The foregoing account of the steps of this negotiation, so far as existing documents can testify, throws much light on the character of Ashburton as a diplomatist. He was despatched to America when relations between the two countries were sufficiently strained to require a conciliating personality and when the demands of the people and of the government were so exacting as to call for a master hand. That he knew American life thoroughly, had many American friends, and a charming American wife, doubtless contributed to his selection, and were important facts in his favor. But they do not explain his sometimes cavalier treatment of his instructions, nor his remarkable readiness to assume responsibility. The very method of procedure, of so informal a nature as to cause Benton to complain that no treaty had ever been presented to the United States Senate with so little evidence as to the steps in the negotiation, appears to have been chosen by Ashburton. These friendly conferences, to which Webster will-

²⁵ Ashburton to Webster, August 7, 1842. *Ibid.*, p. 40.

²⁶ F. O., Am., 379, no. 20.

²⁷ Ashburton to Aberdeen, August 13, 1842. *Ibid.*, 380, no. 23.

ingly assented, took the place of formal negotiations and were carried on without the exchange of written papers, until the time came to cast the final results into shape for presentation. Webster, it is true, has been charged with beguiling Ashburton into the adoption of this plan, but the latter's letters to his chief clearly proclaim Ashburton's responsibility in the matter.²⁸ Also, from the very first Ashburton insisted that discussion of the boundary must not turn on contemporary opinion at the time of the original treaty, 1783, but must merely seek to discuss what was *now* fair and just to both parties. Indeed he not only impressed this verbally upon Webster, but also made it an essential feature of his first formal statement of the British case on June 21, and reiterated it in a private letter to Webster. The guiding principle of the negotiation must be, he wrote, "that the treaty of 1783 was not executable, according to its strict expression, and that the case was therefore one for agreement by compromise".²⁹ He claimed that he himself had much new material, but that he would not produce it, since the one chance of reaching a solution was to avoid technicalities. He was quite consistent in this affirmation. Later despatches show that he frequently prevented the boundary discussions from reverting to an analysis of and deductions from the words of the treaty of 1783.

The assumption of mutual confidence and the intimacy of communication, it has been maintained, placed an obligation upon both representatives to be perfectly open in bringing forward all matters pertinent to the case. In support of this contention, it has also been said that Webster sinned as a gentleman and a diplomat in withholding from Ashburton's knowledge the map found by Jared Sparks in Paris, which accorded with the British claim. On the other hand, there could be no betrayal when each had consented to avoid all technical discussion and all new material. The Sparks map, Webster's weapon to coerce the Senate and to browbeat Maine, is quite apart from the negotiation, as it was, of course, non-existent to Ashburton. Upon this point Ashburton wrote, after returning to England: "The public are very busy with the question whether Webster was bound in honour to damage his own case by telling all. I have put this to the consciences of old diplomatists without getting a satisfactory answer. My own opinion, is that in this respect no reproach can fairly be made." And in another letter a few days later, he wrote, "If I am called upon to

²⁸ Ashburton to Aberdeen, July 13, 1842. F. O. Am., 380, no. 13.

²⁹ Ashburton to Aberdeen, June 29, 1842, enclosing a copy of a letter to Webster of June 21. *Ibid.*, 379, no. 10.

say anything in the Lords, it will be in favour of my collaborator on this point."³⁰

In Ashburton's prompt and emphatic protest against the hampering instruction of March 31, and his freedom at all times in discussing matters upon which he was without instructions, can be seen the exceptionally independent negotiator. His communications clearly show him to be positive, fearless, and tenacious, though at no time actually disobedient to orders, nor often out of sympathy with his chief. Suddenly halted in the boundary discussion, he immediately entered upon the matters of impressment and the *Creole*, both subjects upon which he had no advices whatever. If he really came to deal with "all matters in dispute", he was surely attempting to fulfil his function. Possibly he trusted his protest against supplementary instructions and reasons therefor, to bring him greater liberty of action, and in the outcome he was not disappointed. Ambitious alike to serve the home government acceptably and to be instrumental in the acquisition of all available territory, he made strong efforts to realize Aberdeen's wishes. He was embarrassed by no further instructions, and, as has been shown, he was not unsuccessful. He was chagrined, unquestionably, that no conclusion could be reached in the matters of the *Creole* and impressment, and that these matters could not be included in the treaty. That the failure to accomplish this did not ultimately imperil the treaty is further tribute to the skill of the agent. Though unauthorized to commit his country in any way upon these matters, he yet handled the situation so tactfully that no complaints could be made. The Oregon boundary difficulty, another item omitted, seemed to him remote and the failure to settle it of no immediate importance, yet it proved to be the occasion of the next acute crisis. Ashburton, however, was no more blind to the future in this particular than was Webster himself.

It was not to be expected that a treaty which was in the nature of a compromise would be well received by the people in either country. Viewed fairly however, with allowances for the difficulties of the transaction, the necessity for conciliating the irritated Americans as well as the insistent and long-suffering British, it should be conceded that Lord Ashburton accomplished his mission with distinguished success. In spite of this, the treaty came to be known in England as the "Ashburton capitulation"—a most unjust imputation, for at the same time a jealous American public felt it had equal cause to feel itself defrauded by Webster. Prejudice was to be expected however, for it was quite impossible that there could be

³⁰ Ashburton to Croker, February 7 and February 13, 1843. Croker, *Correspondence and Diaries* (New York, 1884), II. 192.

in England any actual appreciation of the American point of view or of the temper of the American public. Regarding the conclusion of his work, Ashburton wrote:

Upon the defence of my treaty I am very stout and fearless, and they who do not like it may kill the next Hotspur themselves. It is a subject upon which little enthusiasm can be expected. The truth is that our cousin Jonathan is an aggressive, arrogant fellow in his manner. . . . By nearly all our people he is therefore hated, and a treaty of conciliation with such a fellow, however considered by prudence or policy to be necessary, can in no case be very popular with the multitude. Even my own friends and masters who employed me are somewhat afraid of showing too much satisfaction with what they do not hesitate to approve.³¹

He had, he felt, been instrumental in bridging over a dangerous crisis in the relations of the United States and Great Britain and no disturbance seemed likely in the near future.³² He had more than justified his selection and the unusual powers given him. He had proved himself an accomplished diplomatist, courteous, patient, considerate, and above all, just. He had secured for Great Britain considerably more than the minimum of disputed territory she had stipulated for and more than America was prepared to give. The British government had every reason to congratulate itself that it had chosen Lord Ashburton, and, in the end, had trusted to him the negotiation of the northeastern boundary.

EPHRAIM DOUGLASS ADAMS.

³¹ Ashburton to Croker, November 25, 1842. Croker, II. 188.

³² Ashburton to Aberdeen, August 31, 1842. F. O., Am., 380, no. 24.